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WC 05-261

July 1, 2005

VIA HAND DELIVERY

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
c/o Natek, Inc.
236 Massachusetts Avenue, N.E., Suite 110
Washington, D.C. 20002

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JUL - 1 2005

Federal Communications Commission
Office of Secretary

Re: In the Matter of Fones4All Corporation's Petition for Expedited
Forbearance Under 47 U.S.C. § 160(c) and Section 1.53 from Application
of Rule 51.319(d) To Competitive Local Exchange Carriers Using
Unbundled Local Switching to Provide Single Line Residential Service to
End Users Eligible for State or Federal Lifeline Service

Dear Ms. Dortch:

On behalf of Fones4All Corporation ("Fones4All"), enclosed please find an original and nine (9) copies of Fones4All's Petition for Expedited Forbearance filed pursuant to Section 10(c) of the Communications Act, 47 U.S.C. § 160(c), and Section 1.53 of the Commission's rules, 47 C.F.R. § 1.53.

Please date stamp the enclosed extra copy of this filing and return it to the courier. Please contact the undersigned counsel if you have any questions regarding this filing.

Respectfully submitted,

Ross Buntrock fmc
Ross A. Buntrock

Enclosures

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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JUL - 1 2005

Federal Communications Commission
Office of Secretary

In the Matter of)
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Fones4All Corp.)
)
Petition for Expedited Forbearance)
Under 47 U.S.C. § 160(c) and Section 1.53) WC Docket No.
from Application of Rule 51.319(d))
To Competitive Local Exchange)
Carriers Using Unbundled Local Switching)
to Provide Single Line Residential)
Service to End Users Eligible for State)
or Federal Lifeline Service)

PETITION FOR EXPEDITED FORBEARANCE

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SUMMARY

As Commissioner Adelstein observed in his statement regarding the *April 2004 Universal Service Order*, over 5 million U.S. households lack even the most basic telephone connectivity.¹ Indeed, “[f]or many of these consumers, the cost of activating and maintaining telephone service is prohibitively expensive, keeping even the most basic connections out of reach. This is particularly so for low income consumers, who are much less likely to have access to telephone service.”²

At a time when the Commission’s telephone penetration statistics show an identifiable and disturbingly consistent trend of declining numbers of households in the United States with basic telephone service, the Commission must ensure that every mechanism is in place to slow the decline and put the penetration rates of the United States back on an upward path. One of the most effective ways the Commission can address the issue of declining telephone penetration rates is to make UNE-P available to carriers who use it to serve low income universal service eligible end users. It is time for the Commission to demonstrate that it is serious about making basic telephone service available to all Americans and to stop the hemorrhaging and address the embarrassing statistics showing that two-thirds of eligible consumers are not enrolled in the Commission’s low income programs.

Grant of this Petition for Expedited Forbearance is required by Section 10(a) of the Communications Act of 1934, as amended.³ In accordance with Section 10(a)(3), forbearance is in the public interest because, by forbearing, the Commission will ensure the availability of

¹ See Statement of Commissioner Adelstein, *Report and Order and Further Notice of Proposed Rulemaking*, WC Docket 03-109, FCC 04-87 (Apr. 29, 2004).

² *Id.*

³ 47 U.S.C. § 160(a).

telephone service to low-income households that qualify for Federal Lifeline service, as well as complementary state universal service programs, consistent with the statutory requirements of Section 254 the Act. Specifically, providing competitive carriers with UNE-P in order to allow them to serve the most overlooked and underserved consumers—low income single line residential end users—the Commission will further the universal service goals of the Commission, as set forth in Section 254(b), which requires the Commission to base policies for the preservation and advancement of universal service upon the principles that consumers in all regions of the nation, including low-income consumers, should have access to telecommunications and information services that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged in urban areas, and recognizes that affordable rates for low income consumers is a national priority.⁴

⁴ 47 U.S.C. § 254(b).

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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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| |) | |
| Fones4All Corp. |) | |
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| Petition for Expedited Forbearance Under |) | |
| 47 U.S.C. § 160(c) and Section 1.53 |) | WC Docket No. |
| from Application of Rule 51.319(d) |) | |
| To Competitive Local Exchange |) | |
| Carriers Using Unbundled Local Switching |) | |
| to Provide Single Line Residential |) | |
| Service to End Users Eligible for State |) | |
| or Federal Lifeline Service |) | |

PETITION FOR EXPEDITED FORBEARANCE

Fones4All Corporation ("Fones4All" or the "Company"), by its attorneys and pursuant to Section 1.53 of the Commission's rules,⁵ hereby respectfully requests that the Federal Communications Commission (the "Commission"), on an expedited basis, exercise its forbearance authority under Section 10 of the Communications Act of 1934, as amended (the "Act"), and accordingly, forbear from applying Section 51.319(d) of the Commission's rules, the provisions of which were significantly modified in the *Triennial Review Remand Order*.⁶ Specifically, in the *TRRO* the Commission found that competitive local exchange carriers ("CLECs") were no longer impaired under Section 251(c)(3) of the 1996 Act and accordingly, removed the obligation of incumbent local exchange carriers ("ILECs") to provide unbundled mass market local switching ("ULS") to serve any mass market customer utilizing a combination

⁵ 47 C.F.R. § 1.53.

⁶ See *In the Matter of Unbundled Access to Network Elements* (WC Docket No. 04-313); *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers* (CC Docket NO. 01-338). Order on Remand, FCC 04-290 (rel. Feb. 4, 2005) ("*Triennial Review Remand Order*" or "*TRRO*").

of ULS, loops and shared transport in the combination known as the unbundled element network platform ("UNE-P").⁷ The Commission's elimination of UNE-P was premised on the notion that CLECs have "deployed a significant, growing number of their own switches" which can be used to serve the mass market in many areas, and that similar deployment is possible in other geographic markets."⁸

However, the Commission ignored substantial evidence in the record⁹ that UNE-P availability is required in order to allow CLECs to serve single line residential customers who qualify for universal service subsidies, at a time when only one-third of the households eligible for Lifeline/Link-Up assistance actually subscribe to the program,¹⁰ and nascent technologies such as VoIP and wireless service are either unreliable and not available to end users who qualify for universal service subsidies. As explained below, grant of this Petition is compelled by any reasonable application of Section 10 to the Commission's ULS rules as they apply to single line mass-market customers eligible for state or Federal Lifeline subsidies.

⁷ *TRRO* at ¶ 199; 47 C.F.R. § 51.319(d).

⁸ *TRRO* at ¶ 199.

⁹ See e.g., Comments of Telscape Communications, Inc., WC Docket 04-313 and CC Docket 01-338, pp. 5-8 (October 4, 2004) ("if UNE-P is eliminated, consumers would be harmed by less telecommunications choices in the traditionally underserved markets of the low income communities and inner-cities"); *Ex Parte* of Telscape Communications, Inc., WC Docket 04-313 and CC Docket 01-338 (Dec. 8, 2004) (without access to UNE-P for universal lifeline eligible customers there is almost certain to be no competitive provider available to the vast majority of residents of such neighborhoods); *Ex Parte* of Fones4All Corp., WC Docket 04-313 and CC Docket 01-338 (Nov. 30, 2004); *Ex Parte* of Fones4All Corp., WC Docket 04-313 and CC Docket 01-338 (Dec. 2, 2004); *Ex Parte* of Fones4All Corp., WC Docket 04-313 and CC Docket 01-338 (Dec. 8, 2004); *Ex Parte* of Fones4All Corp., WC Docket 04-313 and CC Docket 01-338 (Dec. 21, 2004)

¹⁰ See *Report and Order and Further Notice of Proposed Rulemaking*, WC Docket 03-109, FCC 04-87 at ¶ 1 (Apr. 29, 2004) ("*April 2004 Universal Service Order*").

I. BACKGROUND

Fones4All is a CLEC based in Woodland Hills, California whose focus is to provide basic local telephone service to low income end users who qualify for universal service support. In mid-2003, following the California Public Utilities Commission's ("CPUC") adoption of UNE-P rates for SBC and Verizon that made it economically feasible to do so, Fones4All began marketing single line basic local residential telephone service to end-users in California who qualify for universal service subsidies, including Lifeline. Fones4All has developed innovative, multi-faceted, grass roots marketing efforts that mirror the methods recommended by the Joint Board and adopted by the Commission its recent universal service order, including use of targeted advertising, mailings, and a presence in places where low-income eligible consumers are likely to frequent, including government aid agencies and public transportation outlets.¹¹ In fact, the success of Fones4All's outreach program led the state universal service marketing board in California to seek information regarding Fones4All's methods. Fones4All has been effective because it seeks out universal service eligible households where they live and work, and educates them about the availability of subsidized telephone service.

In the 23 months since Fones4All first began its intensive marketing efforts, the company has provisioned single line residential UNE-P service to approximately 50,000 low-income households, the vast majority of whom had never before received basic wireline telephone service. In the absence of Fones4All's efforts, the 50,000 low income consumers currently

¹¹ See *April 2004 Universal Service Order* at ¶¶ 45-46 ("The first recommended guideline is that states and carriers should utilize outreach materials and methods designed to reach households that do not currently have telephone service. States or carriers may wish to send regular mailings to eligible households in the form of letters or brochures. Posters could be placed in locations where low-income individuals are likely to visit, such as shelters, soup kitchens, public assistance agencies, and on public transportation. Multi-media outreach approaches could be utilized such as newspaper advertisements, articles in consumer newsletters, press releases, radio commercials, and radio and television public service announcements.").

served by Fones4All, in all likelihood, would have remained without the knowledge that subsidized POTS service was available to them and would have continued to struggle without one of the most basic of tools of modern life: a telephone to call an ambulance, a child's school, or a potential employer. Instead, these low income consumers would likely have no phone service at all unless they purchased overpriced pre-paid service from any number of unscrupulous pre-paid providers who prey upon low income, credit challenged consumers. However, since the effective date of the *TRRO*, carriers like Fones4All, who relied upon UNE-P to serve low income customers have been forced to scale back their efforts to seek out new customers. Instead new customers today must provide service using resale products from the ILECs, which are priced at a wholesale rate that is significantly more expensive than the UNE-P rates applicable to carriers' UNE-P embedded bases, and which makes serving Lifeline customers uneconomic for almost any provider except the incumbent.

The experience of Fones4All in the low-income marketplace, along with the disturbing trend of declining telephone penetration in the U.S., is proof of the critical need for the Commission to forebear from application of its rules eliminating UNE-P availability for single line residential service. As Verizon noted in the Commission's Lifeline proceeding, the goal of Lifeline program is to increase telephone subscribership among low-income Americans, consistent with the obligation set forth in Section 254(b)(3) of the Act, which states that "consumers in all regions of the Nation, including low-income consumers . . . should have access to telecommunications and information services."¹²

¹² See *Comments of Verizon* at 4, WC Docket 03-109 (Sept. 2, 2003).

II. TELEPHONE PENETRATION RATES IN THE UNITED STATES ARE FALLING AND TWO THIRDS OF LIFELINE/LINKUP ELIGIBLE SUBSCRIBERS IN THE UNITED STATES ARE NOT ENROLLED IN THE PROGRAM

The purported availability of intermodal alternatives to basic telephone service, in addition to the deployment of competitive facilities, was one of the major premises upon which the Commission based its decision to eliminate UNE-P in the *TRRO* proceeding. However, in adopting rules eliminating UNE-P across the board, the Commission ignored the fact that the Commission's own statistics show telephone penetration rates precipitously dropping. Indeed, the two most recent *Telephone Subscribership in the United States* reports, issued in August 2004 and May 2005,¹³ showed that over 6.5 million American households are still without basic service, let alone risky VoIP service (which does not yet provide access to E-911 in most cases) over cable modem or DSL, or wireless service.¹⁴ In fact, the FCC's May 2005 report is the fourth consecutive report in which the percentage of households in the U.S. with telephone service has *actually dropped* in a way which the report characterized as statistically significant.

The May 2005 report shows that penetration rates for African American and Hispanic households are significantly lower than white households. The May 2005 report shows drops in telephone penetration virtually across the board even from the August 2004 report. The May 2005 report shows that households headed by whites had a penetration rate of 93.2% as of March 2005, an over a 1% drop from the previous report, when 94.9% of white households had service. In addition, the report shows a startling 3% decrease in penetration rates for African American households from the previous report. In March 2005 households headed by blacks had a rate of

¹³ See *Telephone Subscribership In The United States (Data through March 2004)* (released Aug. 2004); *Telephone Subscribership In The United States (Data through March 2005)* (released May 2005), both available at <http://www.fcc.gov/wcb/iatd/stats.html>. ("*Telephone Subscribership In The United States*").

¹⁴ *Id.*

87.7%, compared to a rate of 90.1% in the Fall 2004 report. A similar drop in penetration was recorded among households headed by Hispanics, who showed an over 2% decrease in penetration from the previous report, when households headed by Hispanics had a rate of 90.5%.¹⁵ Not surprisingly, subscription levels also vary by income level. As a general rule, the greater the household income, the greater chance that the household has telephone service.

Some might suggest that this drop in penetration rates is a result of wireless substitution, however, they would be wrong. In its March 2005 survey, which provides the basis the May 2005 subscribership report, the Commission asked the following question for the first time: "Does this house, apartment, or mobile home have telephone service from which you can both make and receive phone calls? Please include cell phones, regular phones, and any other type of telephone."¹⁶ Even with this question in the survey, the telephone penetration rates are declining. This is unacceptable and, indeed, runs directly counter the Commission's mandate in Section 254 of the Act.

In light of these sobering statistics, the Commission should immediately forebear from application of its ULS rules so that there is UNE-P availability for competitive carriers that provide single-line residential telephone service to low income households who qualify for state or Federal Lifeline service. As the Commission noted in one of its most recent universal service orders, "we believe there is more that we can do to make telephone service affordable for more low-income households. Only one-third of households currently eligible for Lifeline/Link-Up assistance actually subscribe to this program."¹⁷

¹⁵ See FCC Releases New Telephone Subscribership Report News Release (Aug. 13, 2004).

¹⁶ *Telephone Subscribership In The United States* at 2.

¹⁷ *April 2004 Universal Service Order*, ¶ 1; See also Commission Staff Analysis set forth in Appendix K at Table I.B.

Based on the Commission's own recognition of the fact that telephone service penetration is down in four consecutive reporting periods in the United States, it is imperative that the Commission make good on its announced commitment to increase universal service subscribership. Specifically, the Commission can act on its concerns regarding universal service subscribership and telephony penetration rates in general, by exercising its forbearance authority to immediately provide that UNE-P be required to be provided to CLECs in the instance where a CLEC's customer qualifies for universal Lifeline support for a single residential line. As the Progress and Freedom Foundation noted in a recent article regarding the May 2005 subscribership report, the downward trend in penetration is disturbing, particularly in light of the "the runaway costs of the USF. The universal service contribution factor has ballooned to 11.1% and total high-cost support payments have increased nearly a billion dollars between 2000 and 2004."¹⁸ Exercising forbearance as set forth herein is one way that the Commission can ensure that the USF tax remains a positive value proposition for all Americans, while at the same time furthering the universal service mandates of the Act.

III. WITHOUT ACCESS TO UNE-P CLECS ARE SEVERELY CONSTRAINED IN THEIR ABILITY TO ECONOMICALLY PROVIDE SERVICE TO GEOGRAPHICALLY FAR FLUNG UNIVERSAL SERVICE ELIGIBLE END USERS.

The *USTA* courts have held that subsidized, below cost retail rates can create impairment in markets where state regulation holds rates below costs. This is particularly true for competitive carriers attempting to serve the universal service eligible market because reimbursement of CLECs from state and federal universal service funds is tied, by law, to ILEC retail basic exchange service, even if those rates are below cost. As a result, state-mandated

¹⁸ "The Strange Case of Fewer Subscribers: A New Wrinkle in the Universal Service Crisis?," Adam Peters, Progress Snapshot 1.3 (June 2005) (available at http://gal.org/pff/notice-description.tcl?newsletter_id=1675068 visited June 29, 2005).

below cost retail rates constitute a significant economic barrier for competitive carriers seeking to provide service to residential customers who qualify for universal service programs.

Pursuant to state and federal law, carrier reimbursement rates for all carriers providing universal service are based upon ILEC cost factors. For instance, in California the Public Utility Commission ties the rate of competitive carrier reimbursement from the state universal service fund to the ILEC rate for basic local exchange service.¹⁹ That is, competitive carriers in California calculate their universal service reimbursement by subtracting the amount the carrier collects from the universal service subscriber from the ILEC rate for basic local exchange service. As a result, a competitive carrier providing universal service consistent with its obligation to do so cannot be fully reimbursed by the universal service fund for the costs it incurs in providing the service in the same way that ILECs are. Rather, competitors providing the universal service are inextricably tied to the ILEC rate structure. Therefore, even if a carrier serving universal service eligible customers deployed its own switch-based network it could never recoup its costs. By contrast, with UNE-P a competitor's cost structure -- as well as rate structure -- is tied to the ILEC's, making service possible.

In late 2004, in light of the *USTA II* decision and the forthcoming elimination of UNE-P, Fones4All sought out alternatives to ILEC provided switching from competitive providers of switching in order to continue providing universal service to its Lifeline customers. But because Fones4All's low income customer base is spread across economically depressed residential

¹⁹ See California Public Utilities Commission General Order 153, the administrative regulation governing administration of the California state universal service program, which provides at section 8.3.2: "Each utility, on a per ULTS customer basis, may collect from the ULTS Fund an amount of lost revenues equal to the difference between (a) ULTS rates and charges, and (b) the lesser of the following: (i) the utility's regular tariffed rates and charges, or (ii) **the regular tariffed rates and charges of the ULTS customer's incumbent local exchange carrier.**" (emphasis added). General Order 153 can be viewed in its entirety at: <http://www.cpuc.ca.gov/PUBLISHED/GENERALORDER/40482.htm>.

metropolitan areas and in some rural pockets of California, neither Fones4All, nor any other small provider focused on the Lifeline market, can economically replicate the ILECs' ubiquitous network. Over 95% of Fones4All customers are served by wire centers where no other facilities-based carrier other than the ILEC provides service. This is because the areas that Fones4All serves are in low income and tier 2 rural markets in California. It is very difficult for a CLEC to replicate the ubiquity of the ILEC and deploy infrastructure in discrete areas, even where it has some concentrations of customers. As Telscape Communications noted in an *ex parte* presentation in the *TRRO* docket, "the lack of unbundled switching will hinder Telscape's efforts [to provide single line residential service to universal service eligible subscribers]" because the significant barriers to collocating, and the inability to effectively market service across a broad geographic area.²⁰

Without the availability of UNE-P to serve single line Lifeline eligible customers, telephone penetration rates are likely to continue to drop, thereby effectively frustrating one of the most important public policy goals of the Act: to ensure that all Americans have access to both basic telecommunications service.²¹ The Commission must recognize that making UNE-P available to competitors to serve low income single line customers will help to ensure that basic telecommunications services are available to "all the people" of the United States, and accordingly, must immediately forbear from application of its ULS rules for purposes of providing single line residential service to Lifeline eligible customers.

²⁰ *Ex Parte* of Telscape Communications, Inc., WC Docket 04-313 and CC Docket 01-338, p. 3 (Dec. 8, 2004).

²¹ According to the Universal Administrative Company, administrator of the Lifeline and Link-Up programs, one of the FCC's primary missions is: "to ensure that telecommunications services are available to "all the people" of the United States. The Low Income support mechanism assists eligible low-income consumers to establish and maintain telephone service by discounting services provided by local telephone companies." See USAC web site (<http://www.universalservice.org/li/overview/mission.asp>).

IV. FORBEARANCE FROM RULE 51.319(d) AS IT APPLIES TO SINGLE LINE LIFELINE ELIGIBLE CUSTOMERS OF CLECS WILL PROMOTE THE UNIVERSAL SERVICE GOALS OF CONGRESS AND THE COMMISSION

Promotion of universal service, and the availability of basic telecommunications services to all Americans is clearly one of the primary purposes encompassed in the Act. Section 254 of the Act codified the Commission's and the states' historical commitment to advancing the availability of telecommunications services for all Americans.²² Section 254(b) establishes principles upon which the Commission shall base policies for the preservation and advancement of universal service. As the Commission has often noted, "these principles state that consumers in all regions of the Nation, including low-income consumers, should have access to telecommunications and information services that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged in urban areas. These principles also recognize that ensuring rates are affordable is a national priority."²³ Clearly then, long-standing universal service policies compel elimination of barriers, such as the *TRRO*'s ULS rules, which preclude achievement of one of the principle purposes of the Act: providing access to both basic and advanced services to all Americans.

One might surmise that it really does not matter if competitors are able to provide universal service to eligible end users. But whether one believes that to be the case depends on whether the Commission is serious about its obligation to ensure that all Americans have access to and actually utilize basic telecommunications capabilities. As stated above, the last four telephone penetration rate studies released by the Commission show a decrease in basic telephone subscribership in the United States. Companies like Fones4All actively pursue these

²² 47 U.S.C. § 254.

²³ *April 2004 Universal Service Order*, ¶ 3, citing Section 254.

underserved consumers and educate them about universal service. The net result is that over the last 23 months Fones4All has connected 50,000 single line residential universal service eligible households that did not have phone service before. In the absence of companies like Fones4All, telephone subscription rates would be even worse because lower income Americans would not be actively pursued and provided with the basic telephone service.

The Commission concluded in the *TRRO* proceeding that there is competition in the mainstream basic market for basic local telephone service. But while the mainstream residential market may be competitive, where larger companies are actively marketing bundled packages of local, long distance, and data services, the universal service market is not a competitive one, as evidenced by the fact that in many states, only the ILEC provides service to that market.²⁴ As Telscape Communications stated in the *TRRO* docket, "Telscape encounters very limited competition from other CLECs in serving the areas populated by these [low income] customers. The low income residential consumer simply has not been attractive to many competitive companies."²⁵ In general, universal service customers do not have broadband access, and often use calling cards to make long distance calls, since there is usually a toll blocking restriction on the universal service line.

Clearly the universal service market stands in stark contrast to the mainstream residential market. As the record in the *TRRO* proceeding amply demonstrates, VoIP alternatives, which require a broadband connection costing anywhere from \$32 to \$92 per month, as well as

²⁴ USAC's Lifeline Support web site (<http://www.universalservice.org/ili/consumers/Lifelinesupport.asp>) which provides consumers with contact information for the phone companies in their area that provide Lifeline and LinkUp demonstrates that except in rare instances where a wireless carrier has obtained ETC certification, only the ILEC is providing Lifeline and Link Up service in many states.

²⁵ *Ex Parte* of Telscape Communications, Inc., WC Docket 04-313 and CC Docket 01-338, p. 3 (Dec. 8, 2004).

expensive cable and wireless alternatives, are far beyond the reach of low income universal service customers.²⁶ There is a compelling need for the Commission to pull out the stops and provide every mechanism, including UNE-P availability, to ensure that universal service eligible customers are served, particularly at a time when the Commission's statistics show the number of households with basic telephone service falling.

V. THE STANDARDS FOR FORBEARANCE ARE UNQUESTIONABLY SATISFIED AND THE COMMISSION SHOULD FORBEAR FROM APPLYING RULE 51.319(d) TO CLECS USING ULS TO SERVE SINGLE LINE LIFELINE ELIGIBLE CUSTOMERS

The goal of the Telecommunications Act of 1996 is to establish "a pro-competitive, de-regulatory national policy framework."²⁷ An integral part of this framework is the Congressional mandate, set forth in Section 10, that the Commission forbear from applying any provision of the Act, or any of the Commission's regulations, if the Commission makes certain specified findings with respect to such provisions or regulations.²⁸ The Commission is required to forbear from any statutory provision or regulation if it determines that: (1) enforcement of the regulation is not necessary to ensure that charges and practices are just and reasonable, and are not unjustly or unreasonably discriminatory; (2) enforcement of the regulation is not necessary to protect consumers; and (3) forbearance is consistent with the public interest.²⁹

Specifically, Section 10 of the Act directs that:

[T]he Commission shall forbear from applying any regulation or any provision of th[e] Act to a telecommunications carrier . . . in any or some of its . . . geographic markets, if the Commission

²⁶ Not only are these technologies expensive, but they are generally not available over the ungroomed ILEC network that serves poor areas; cable modems are only available to those who subscribe to cable television.

²⁷ Joint Explanatory Statement of the Committee of Conference, S. Conf. Rep. No. 230, 104th Cong., 2d Sess. 113 (1996).

²⁸ 47 USC §160(a).

²⁹ 47 USC §160.

determines that (a) enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier . . . are just and reasonable and are not unjustly or unreasonably discriminatory; (b) enforcement of such regulation or provision is not necessary for the protection of consumers; and (c) forbearance from applying such provision or regulation is consistent with the public interest.³⁰

Under this standard, as explained below, the Commission is compelled to forbear from applying the rules restricting the availability of ULS in instances where a CLEC requests ULS for the sole purpose of providing, under a state or Federal Lifeline program, service to a single line residential end user. Application of the ULS restrictions set forth in Rule 51.319(d) to carriers seeking to provide single line residential service to universal service eligible customers is contrary to the public interest, as it effectively precludes most CLECs from serving Lifeline eligible customers, resulting in an outcome counter to the universal service goals established by Congress and the FCC. Since Rule 51.319(d) went into effect only months ago, low-income consumers have faced a drop in the already limited choices among telecommunications providers available to them.

A. The Commission's Application Of Rule 51.319(d) To CLECs Using ULS To Serve Single Line Lifeline Eligible Customers Is Not Necessary To Prevent Anticompetitive Harm To Telecommunications Carriers

The Commission's application of the ULS rules and regulations set forth in Rule 51.319(d) are not necessary to prevent anticompetitive harm to telecommunications carriers. Rather, as discussed more fully above, forbearance is necessary to prevent anticompetitive harm, as, there is no competition in the market for Lifeline services today. As was amply demonstrated in the *TRRO* docket, there is not competition in the residential universal service eligible market

³⁰ *Id.*

today, and “competition will not develop in these impacted areas without unbundled local switching.”³¹ Today, ILECs essentially have a monopoly on the Lifeline/Link-Up market, and as a direct result of the lack of competition to provide service to this segment of the population, to date, more than two-thirds of the eligible end users are not enrolled in the Lifeline/LinkUp program. Clearly, this is not a market the ILECs are actively pursuing. Forbearance from the Commission’s ULS rules, therefore is compelled by the Act. Forbearance from the ULS rules is necessary to “promote competitive market conditions: and enhance competition among providers of telecommunications services.”³² CLECs are at a competitive disadvantage in serving the Lifeline customer market as compared to the ILECs as a result of the ULS rules from the *TRRO*. Accordingly, the Commission should forbear from further applying Rule 51.319(d) to single line Lifeline eligible customers of CLECs and allow low-income consumers to benefit from the competition the Commission has determined exists in the mainstream market for telecommunications services.

B. The Application Of Rule 51.319(d) To CLECs Using ULS To Serve Single Line Lifeline Eligible Customers Is Not Necessary To Protect the Interests of Telecommunications Consumers

The Commission’s application of the rules and regulations promulgated under the *TRRO* are not necessary to protect the interests of telecommunications consumers. To the contrary, application of Rule 51.319(d) has harmed low income telecommunications consumers by reducing the competitive choices available to them for basic telecommunications services. Indeed, the competitive disadvantage to CLECs that has resulted from the ULS rules imposed under the *TRRO* has forced CLECs from the market and deterred investment in

³¹ See *Ex Parte* of Telscape Communications, Inc., WC Docket 04-313 and CC Docket 01-338, 4 (Dec. 8, 2004).

³² See 47 U.S.C. § 160(b). The pro-competitive affect of the requested forbearance thus furthers the public interest under Section 10 (a)(3). 47 U.S.C. § 160(a)(3).

telecommunications businesses, thereby limiting the service options available to low income telecommunications consumers. The *TRRO* record was replete with evidence that there is, in the vast majority of economically disadvantaged areas of the United States, no competitive alternative provider of telecommunications services.³³ Moreover, there was precious little competition in the universal service eligible market segment even while ULS was available, and elimination of ULS has clearly already worsened the prospects that competition will develop in its absence.

C. The Commission's Forbearance From Application of Rule 51.319(d) To CLECs Using ULS To Serve Single Line Lifeline Eligible Customers Will Serve The Public Interest

Forbearance from application of Rule 51.319(d) to carriers who seek to serve single line residential Lifeline eligible end users will enable a great number of CLECs to maintain and expand their current telecommunications service to underserved universal service eligible end users, and therefore will serve the public interest. As demonstrated herein, the Commission's forbearance from further application of the ULS rules and regulations promulgated under the *TRRO* would generate robust competition and enhanced consumer choice, and thereby would serve the policy goals of the Act by helping to achieve the universal service goals of the Act.

The Commission has recognized that providing telephone service to low-income universal service eligible consumers provides a benefit. As the Commission staff noted in its Lifeline Staff Analysis: "There is a benefit to increasing the number of Lifeline participants, and also a cost. The obvious benefit would be that some of those added Lifeline subscribers would

³³ See e.g. *Fones4All Ex Partes* (Dec. 8, 2004); *Telscape Communications, Inc. Ex Parte*, 1 (Dec. 8, 2004).

newly receive telephone service. The cost at the federal level would be the additional federal dollars spent on the additional Lifeline enrollees.”³⁴

Without the availability of UNE-P to serve the universal service eligible low-income consumers will be forced to either obtain service from the ILECs, who do not actively market universal service availability; obtain service from pre-paid providers that charge exorbitant prices, or forego basic service altogether. As former Chairman Powell recognized, universal service has “improved people’s lives by making everything from jobs, to healthcare to emergency services available to program participants. And while overall telephone penetration in the United States remains extremely high, too many people, particularly on tribal lands and in rural areas, forgo this essential connection.”³⁵ Availability of UNE-P to allow competitors to serve Lifeline customers will ensure that the goals of Section 254(b) of the Act are furthered. Forbearance from the rules promulgated in the *TRRO* for the limited purpose of allowing competitors to use UNE-P in the circumstance where a carrier’s customer qualifies for Lifeline support will ensure that the national priority seeking to provide consumers in all regions of the nation with access to telecommunications and information services that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged in urban areas.

VI. CONCLUSION

As the Commission has recently noted, despite the efforts of the Commission in implementing the universal service mandates of the Act, telephone penetration rates are falling, and millions of low income consumers remain without basic telephone service.³⁶ Consistent

³⁴ See *April 2004 Universal Service Order*, Appendix K.

³⁵ See *April 2004 Universal Service Order*, Statement of Chairman Michael K. Powell.

³⁶ See *April 2004 Universal Service Order*, Statement of Commissioner Adelstein.

with the discussion presented herein, the Commission is compelled to exercise its authority under Section 10 of the Act, and accordingly, to forbear from applying Rule 51.319(d) to carriers using UNE-P to serve single line state and Federal Lifeline eligible residential end users.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Ross Buntrock / emc".

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July 1, 2005

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July 1, 2005

VIA HAND DELIVERY

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Federal Communications Commission
Office of Secretary

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
c/o Natek, Inc.
236 Massachusetts Avenue, N.E., Suite 110
Washington, D.C. 20002

Re: In the Matter of Fones4All Corporation's Petition for Expedited Forbearance Under 47 U.S.C. § 160(c) and Section 1.53 from Application of Rule 51.319(d) To Competitive Local Exchange Carriers Using Unbundled Local Switching to Provide Single Line Residential Service to End Users Eligible for State or Federal Lifeline Service

Dear Ms. Dortch:

On behalf of Fones4All Corporation ("Fones4All"), enclosed please find an original and nine (9) copies of Fones4All's Petition for Expedited Forbearance filed pursuant to Section 10(c) of the Communications Act, 47 U.S.C. § 160(c), and Section 1.53 of the Commission's rules, 47 C.F.R. § 1.53.

Please date stamp the enclosed extra copy of this filing and return it to the courier. Please contact the undersigned counsel if you have any questions regarding this filing.

Respectfully submitted,


Ross A. Buntrock

Enclosures

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